



Appl. No : 09/764,490  
Filed : January 17, 2001

#### REMARKS

With this Amendment, Claims 1-51 and 92 are pending in the present application, Claims 1, 4-11, 14-17, 24, 25, 33, 34, 39, 41-44, 48 and 51 are amended, and new Claim 92 is added. Claims 52-91 are cancelled without prejudice. Applicant reserves the right to pursue the subject matter of the cancelled claims in subsequent continuing applications.

#### Telephonic Interview

Applicant would like to thank the Examiner for being available for the telephonic interview held on February 5, 2004 with Applicant's representative, Lang McHardy. Mr. McHardy presented a proposed amendment to Claim 1. Applicant's representative discussed the distinctions over the Nierlich et al. reference, and the Examiner indicated that he may conduct an additional search.

#### Objections to the Specification

The abstract and the specification were objected to for various informalities and typographical errors. The specification has been amended as indicated above in order to correct these errors and informalities.

#### Objections to the Claims

Claims 1-33, 39, 41-43 and 48 were objected to under 37 C.F.R. § 1.75(a). Applicant respectfully submits that the claims have been amended to clarify the language used therein. If any further issues remain, the Examiner is invited to call the undersigned to resolve such issues promptly.

#### Anticipation under 35 U.S.C. § 102

Claims 1-35, 37-44 and 46-51 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nierlich et al. (US 6,519,509). Claims 1, 4-11, 14-17, 24, 25, 33, 34, 39, 41-44, 48 and 51 have been amended as indicated above. Applicant respectfully submits that the claims presented above are not anticipated or rendered obvious by the prior art of record.

Claim 1 has been amended to recite *inter alia*, "providing a control system at a consumer site; receiving in said control system a representation of a utility usage by a utility-consuming device, said representation of utility usage comprising measured values of an output of said device as well as measured values of a utility input delivered to said device."

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Applicant respectfully submits that Nierlich does not teach or suggest the unique combination of limitations recited in Applicant's Claim 1 as amended.

Nierlich et al teaches a system for efficiently distributing power to a number of end users on a power grid according to a demand side bidding program. The system of Nierlich et al. monitors a quantity of power used by a given device or group of devices, and curtails power supplied to certain device(s) during periods when the demand for grid power is high relative to supply so that the un-needed power can be re-directed to another user on the grid.

In contrast, in certain preferred embodiments, the system described in the present Application seeks to promote efficient and optimized utility usage by the individual utility-consuming devices operated by a consumer. This is accomplished, in part, by monitoring various quantitative parameters such as an amount of gas, water, heat, or other secondary by products exhausted by the respective loads (see P. 12, L. 26 – P. 13, L. 10) and/or qualitative parameters of the usage of a utility by a load, such as an efficiency rating (see P. 16, L. 6-17).

Applicant respectfully submits that the claims, as amended above, are not anticipated or rendered obvious by the prior art of record.

Obviousness under 35 U.S.C. § 103

Claims 36 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nierlich et al in view of Flig et al. (US 4,841,287). As indicated above, independent Claims 34 and 44 are believed to recite combinations of limitations which are not taught or suggested by the prior art of record. Applicant respectfully submits that the combination of Nierlich et al. with Flig et al. does not teach all of the limitations of Claims 36 and 45.

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CONCLUSION

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of all of the features or acts recited in a claim which distinguishes it over the prior art. Additionally, any argument made in support of the patentability of a single claim is intended to refer only to the claim which is addressed in the argument, and should not be read as influencing the interpretation of any other claims or claim limitations.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the present application and to place the claims into condition for allowance. Nevertheless, if any issues remain which can be resolved by telephone, the Examiner is respectfully requested to call Applicant's representative at the number indicated below in order to resolve such issues promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3/4/04

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